



## **Major concerns around Namakhvani Cascade Hydro Power Project Agreement**

We are writing to share concerns that environmental and human rights organizations, like ourselves, have regarding the construction of Namakhvani Cascade project that is currently being implemented in western part of Georgia. We are concerned that despite the scale (installed capacity 424 MW) and declared importance of the project, decision-making and implementation process of Namakhvani Cascade is utterly flawed. Major drawbacks relate to the violation of the fundamental rights of the local population, project implementation Agreement neglecting public interest, expected serious impact of the project on the natural and social environment, poor Natural Hazard Risk Assessment, and the objection of the local population towards the project, who despite being affected by the Namakhvani HPPs are neglected and marginalized.

Social Justice Center has prepared an extensive assessment of the Namakhvani Cascade Hydro Power Project Build Own and Operate Agreement (Hereinafter – “Namakhvani Agreement” or “Agreement”) and decided to share major findings of this evaluation with you. Based on a detailed study of contractual provisions, we contend that the Agreement does not ensure a fair balance between the interests of the company, on one hand, and the state, on another.

Under Namakhvani Agreement Company is granted virtually unlimited access to land in two regions of Georgia; Company has the right to demand the transfer of land plots for a nominal value (1 GEL) if it deems those lands to be necessary for the project. Determining what is required land is the company’s sole discretion and it has no obligation to provide the proof of such necessity. Furthermore, land will be considered “required” if the company needs it not only for works directly related to the construction of the project, but also for obtaining natural recourses.

Such a broad definition of the required land is not in compliance with best practices and should be considered as an illegitimate practice of land grab. We expect, that due to the poorly defined terms of the Agreement that allows the company to demand land which is not strictly necessary for the project, even more people will be subjected to large-scale economic displacement than it would otherwise be required. Moreover, the company is exempted from the obligation to obtain licenses for extracting natural recourses. According to the Agreement, such exemption shall last for the maximum period allowed by legislation.

Namakhvani Agreement guarantees Company’s right to utilize not only the recourses of Rioni River (on which the construction hydropower plant is planned) and its tributaries but also different, Tsknenistkali River. The Agreement goes even further with obligating the government to divert the resources of

Tskentskali river into Namakhvani Cascade in order to ensure forecasted generation of Namakhvani plant. Such broad rights on water recourses are realistically expected to infringe the economic interests of other hydro energy producers who will demand financial compensation. The Company's interests are once again protected as the Agreement requires the government to indemnify company from any losses arising from the claims by third parties related to the change of water flow.

Along with granting the aforementioned rights to the Company, Namakhvani Agreement imposes the financial insurance of almost every risk upon the state budget. While undertaking certain political risks by the government and hence, ensuring the bankability of the project is important, Namakhvani Agreement goes far beyond this task and provides a risk allocation scheme that is neither balanced nor fair.

Namakhvani Agreement includes a change in law clause too which is extremely generous to the company. In particular, if a change in law negatively affects the company's financial position and parties fail to negotiate a revision of the agreement, government is obliged to pay the company not only reduced revenue or increased costs (which is a standard practice) resulting from change in law but also damages. Moreover, if there is any increase in taxes, the government is obliged to directly compensate for it not only the company but also its lenders and contractors.

Regulation of force majeure events is also intended to preserve the interests of the company to the maximum extent. Namely, the definition of political force-majeure which triggers strict financial liability of the government includes events such as intervention, blockade, terrorist attacks, etc. over which Georgia has no or very little control. Nevertheless, Agreement requires the government to pay the company the damages sustained as a result of political force-majeure. While ensuring certain political risks by public partner is more or less an accepted practice, risk allocation should take into account the ability of both parties to manage or mitigate certain risks. For this reason, including purely external events in political force-majeure and subjecting it to strict compensation regime does not seem fair approach. Moreover, the right to terminate the Agreement due to prolonged force-majeure events is granted only to the company. Government, on the other hand, is required to continue performing all of its obligations during political force-majeure.

Last but not the least, in case of termination of the Agreement regardless of who terminates it and even if the company is a defaulting Party, government shall pay significant compensation to the company. Moreover, under the Agreement remedies of the state is extremely limited, for example, the government is not allowed to claim damages from the company resulting from the latter being in breach of the Agreement.

In the light of those provisions, it is even more striking that the company has very few obligations under the Agreement. To illustrate this, it is sufficient to mention that the Agreement does not impose a strict obligation to employ the citizens of Georgia. Since the company is not obliged to provide minimum training of the locals, company is free not to employ locals if they do not possess required skills. And even if they do, company is allowed to bring foreign personnel provided that they will demand less salary.

For these reasons, we consider that the cost of the project which includes not only direct financial and contingent liabilities but also ecological, social, and other costs, significantly outweighs its benefits. It is worth noting that the fiscal risks and other financial factors including value for money of the project should have been evaluated by the Ministry of Finance of Georgia before concluding the Agreement. We have requested the relevant opinion of Ministry of Finance from different state agencies on several occasions

but have not received the document despite it being public information. Minister of Economy and Sustainable Development did not answer the question whether or not the evaluation from the side of Ministry of Finance took place at all. This casts serious doubts as to the existence and/or content of the opinion. Therefore, it is highly likely that the Agreement not only neglects public interests but was also concluded in violation of legislative requirements i.e. without the opinion of Ministry of Finance which is the central document for such projects. Furthermore, we have serious concerns regarding the transparency and legitimacy of the process which led to the selection of the company as a project developer.

Apart from the issues related to the Agreement and selection process, experts and civil society organizations express their fears and concerns as to the technical and ecological soundness of the project. Specialists contend that geotechnical studies, essential to the construction of power plant, were inadequately carried out. Government has issued a positive environmental decision and construction permit notwithstanding the fact that the scale and nature of potential impact of the project on natural and social environment are not properly studied and researched. This is clear from the permits issued by the government that list numerous essential studies and documentation the company has to submit to relevant state agencies. It is problematic that state deemed it appropriate to nevertheless issue the permits in the absence of mentioned documents which should have been the basis of such decision. Our partner organizations have challenged the legality of the environmental decision at court based *inter alia* on the fact that the decision was made without the company having submitted full studies and in absence of a comprehensive assessment of the environmental and social impact of the project. Although the complaint was brought in April last year, the court has not scheduled a single hearing even a preparatory one.

Although a number of essential studies and documentation is not submitted by the company, the construction works of Namakhvani Cascade, of this exceptionally large-scale and high impact inducing project, have already commenced. To this day government of Georgia continues to ignore the concerns and questions of the affected population and refuses to engage in meaningful dialogue with locals. Instead, the state has chosen to employ repressive means and disperse the protest of local residents, who gather to protest the ongoing construction works, by using police force.

We would like to express our appreciation for your endeavors which we consider crucial for the development of our country. Thus, considering the importance and scale of the Namakhvani Cascade project, as well as potential damage it can cause to the social and natural environment, which seemingly cannot be avoided by our concerted effort and active objection of the local population, we request you to take measures available to you in order to help the process be reversed to the democratic and fair resolution of the problems and we ask you to express your unwavering support for democracy, rule of law, and human rights protection in Georgia. We also believe that your effort can significantly assist us, local organizations, to pressure the Government of Georgia act in public interest.